Supreme Court, U.S.
FILED
MAR 29 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1037

In The

Supreme Court of the United States

October Term, 1988

STATE OF ARIZONA,

Petitioner,

vs.

HONORABLE DANIEL E. NASTRO,
a judge of the Superior Court of the State of Arizona,
in and for the County of Maricopa,

Respondent,

ELDEN GARDNER,

Real Party in Interest.

On Writ of Certiorari to the
Arizona Supreme Court

SUPPLEMENTAL BRIEF TO THE PEITITION FOR A WRIT OF CERTIORARI

ROBERT K. CORBIN
Attorney General
State of Arizona

STEVEN J. TWIST
Chief Assistant
Attorney General

JESSICA GIFFORD FUNKHOUSER
Chief Counsel
Criminal Division

TIMOTHY C. HOLTZEN
Assistant Attorney General
Counsel of Record
1275 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-4686

Attorneys for Petitioner

TABLE OF CONTENTS

	Page
TABLE OF CASES AND AUTHORITIES	ii
SUPPLEMENTAL BRIEF OF PETITIONER	1
I. Summary Of Issues Presented In Petition.	2
II. The Questions Presented In Holland v. Illinois Will Not Resolve The Issues Presented In This Case.	5
III. The Issues Presented In This Case Were Not Resolved In Teague v. Lane.	7
IV. The Unresolved Conflict Presents An Important Issue For Review In This Case.	10
CONCLUSION	16
APPENDIX: Opinion in Torres v. State of Florida (Fla.App. 2d Dist., February 1, 1989)	A-1
CERTIFICATE OF SERVICE (Follows Appendix)	

TABLE OF CASES AND AUTHORITIES

Cases	Page
Batson v. Kentucky 476 U.S. 79 (1986)	2, passim
Gov't of Virgin Islands v. Forte 865 F.2d 59 (3rd Cir. 1989)	15
Holland v. Illinois No. 88-5050 57 L.W. 3570	5,6,7,8,13,14,16
Kibler v. State 501 So.2d 76 (Fla.App. 1987)	13
People v. Crowder 161 Ill.App.3d 1009 515 N.E.2d 783 (Ill.App. 1987)	13
People v. Holland 121 Ill.2d 136 520 N.E.2d 270 (Ill. 1988)	13
Pope v. State 256 Ga. 196 345 S.E.2d 831 (Ga. 1986)	12
Pope v. United States 372 F.2d 710 (8th Cir. 1967)	14
Seubert v. State 749 S.W.2d 585 (Tex.App. 1988)	15

Smith v. State
516 So.2d 149
(Ala.Crim.App. 1987) 13

State v. Christensen
720 S.W.2d 738
(Mo.App. 1986) 13

State v. Hall
751 P.2d 701
(N.M.App. 1987) 13

State v. Jackson
317 N.C. 1
343 S.E.2d 814
(N.C. 1986) 14

State v. Superior Court
157 Ariz. 541
760 P.2d 541 (1988) 4,5

State v. Superior Court
156 Ariz. 512
753 P.2d 1168
(Ariz.App. 1987) 10

Teague v. Lane
____U.S.____
57 L.W. 4233
(Feb. 22, 1989) 8,9,16

Torres v. State of Florida
____So.2d____
1989 Fla.App. LEXIS 462
Appendix A
(Fla.App., Feb. 1, 1989) 11

United States v. Biaggi
853 F.2d 89
(2d Cir. 1988) 14

United States v. Chavez-Vernaza
844 F.2d 1368
(9th Cir. 1987) 12

United States v. Hamilton
850 F.2d 1038
(4th Cir. 1988) 12

United States v. Townsley
856 F.2d 1189
(8th Cir. 1988) 12

United States v. Vaccaro
816 F.2d 443
(9th Cir. 1987) 12

No. 88-1037

In The

Supreme Court of the United States

October Term, 1988

STATE OF ARIZONA,

Petitioner,

vs.

HONORABLE DANIEL E. NASTRO,
a judge of the Superior Court of the State of Arizona,
in and for the County of Maricopa,

Respondent,

ELDEN GARDNER,

Real Party in Interest.

SUPPLEMENTAL BRIEF TO THE PEITITION FOR A WRIT OF CERTIORARI

This Supplemental Brief of Petitioner discusses new cases and intervening matter not available at the time the Petition was filed by the State of Arizona on December 17, 1988.

I. Summary Of Issues Presented In Petition.

The State of Arizona is petitioning this Court to review the primary question of whether a white defendant, who has a black defense attorney, may challenge the state's use of its peremptory strikes in trial jury selection, and require the prosecutor to justify such strikes, under the Sixth Amendment or Batson v. Kentucky, 476 U.S. 79, 96, 106 S.Ct. 1712, 1723, 90 L.Ed.2d 69, 87 (1986).

The State of Arizona maintains that Batson restricted itself to a remedy for racial discrimination under the Equal Protection Clause and provided a limited intrusion into the "historical privilege of peremptory challenge free of judicial control". 476 U.S. at 91. Batson relaxed the burden of proof required for a defendant to require disclosure by the state when the court finds the state

discriminated against a black defendant and intentionally tried "to exclude members of his race from the petit jury". Id. at 82.

The trial prosecutor in the instant case relied upon the limited scope of Batson when he objected to the Respondent trial judge's decision that a disclosure of justification be made after the prosecutor peremptorily struck the second of two black venire members from the jury panel in a trial of a white defendant.

The Arizona Supreme Court did not decide simply that the rule of Batson extends to white defendants. Instead, the Court below ruled that standing under Batson was not limited to "same-race" defendants and that the Sixth Amendment guarantees any defendant of any race the right to challenge the state's strikes against jurors of any race or class. The Arizona Supreme Court, interpreting only

federal law (and excluding consideration of state law at this point), announced a new and all inclusive rule:

> We therefore adopt a clear, simple rule: under the jury trial clause of the sixth amendment, the state may not make discriminatory use of the peremptory challenge to exclude any substantial and identifiable class of citizens from the privilege and obligations of jury service.

[This rule appears at pp. A-18-19 of the opinion of the Arizona Supreme Court, in Appendix A to the Petition, reported as State v. Superior Court, 157 Ariz. 541, at 546, 760 P.2d 541, 546 (1988).]

The Arizona Supreme Court held that the fair cross-section right extends to both the jury panel and the trial jury. The Court below reasoned that exclusion of any class violates a defendant's constitutional rights and deprives minorities of the opportunity for jury service, infringing on their privileges of citizenship, and further that

exclusion creates a perception that the "criminal justice system is imposed on certain minorities rather than operating to protect and further the rights of all citizens". State v. Superior Court, 157 Ariz. at 545-46, 760 P.2d at 545-46, Appendix A to Petition at A-18.

II. The Questions Presented In Holland v. Illinois Will Not Resolve The Issues Presented In This Case.

On February 27, 1989, this Court granted unrestricted certiorari in Holland v. Illinois, No. 88-5050, 57 L.W. 3570, which presented two questions for review:

1. Whether the state's use of peremptory challenges to remove black prospective jurors on grounds of race violate the Sixth Amendment right to trial by jury.

2. Whether petitioner, a white man, has standing to challenge, as violative of that constitutional right, the removal by the prosecutors of black prospective jurors from the jury in petitioner's case.

The Petition in Holland is not based on the "same-race" limitation of Batson v. Kentucky, 476 U.S. at 96, 106 S.Ct. at 1723, 90 L.Ed.2d at 87 (1986). The Holland Petition does not present whether the Batson rule should be extended to allow standing by white defendants nor that Batson does not restrict standing by white defendants. Rather, the Holland Petition argues that the Sixth Amendment prohibits improperly excluding black venire members through peremptory challenges by the prosecution. The oral argument in Holland v. Illinois is presently set for the October, 1989, term.

The question of whether the Equal Protection remedy of Batson applies to all races and classes of defendants and all races and classes of trial jurors under the Sixth Amendment is not before the Court. The resolution of these

issues is squarely presented in the decision of the Arizona Supreme Court below.

The State of Arizona in the instant Petition maintains that Batson, supra, limited standing to "same-race" defendants, and that white defendants, even with a black defense attorney, cannot make a prima facie case of racial discrimination on the basis of peremptory challenges of black venire members. Having granted review to the Sixth Amendment issue in Holland, this Petitioner submits that review should be granted to the broader Sixth Amendment and Batson Equal Protection issues presented herein.

III. The Issues Presented In This Case Were Not Resolved In Teague v. Lane.

At the time this Petition was filed in December of 1988, this Court was considering a black defendant's challenge

to a prosecutor's strikes of black jurors, presented in the Petition of Frank Teague against Illinois prison Director Michael Lane, No. 87-5259. This Court has resolved Teague v. Lane, ___ U.S.____ (Feb. 22, 1989), without deciding the question of whether the Sixth Amendment, or only the Equal Protection Clause, gives a defendant the right to challenge the state's peremptory strikes at trial. The State of Arizona seeks review of these questions in this case.

In light of the disposition in Teague and the limited question before the Court in Holland, the State of Arizona will not obtain resolution of these issues for this instant case, or any other cases in Arizona in the future, without a grant of certiorari on this Petition and reversal by this Court.

The basis for this Court's decision in Teague illustrates the error in the analysis of the issue by the Arizona Supreme Court. In Teague v. Lane, ___ U.S.____, 57 L.W. 4233, at 4239-40 (Feb. 22, 1989), this Court stated that the fair cross-section requirement of the Sixth Amendment does not involve a "bedrock procedural element" which would "undermine the fundamental fairness" that is "implicit in the concept of ordered liberty".

In contrast, the Court below elevated the importance of a trial jury representative of all segments of the community to a central position in the judicial system. This removed the legitimate use and scope of peremptory challenges from the prosecution.

The State of Arizona maintains that the prosecution's right to peremptory challenges at trial should not be

violated by extending to all defendants the procedural remedy of Batson. This essential trial issue deserves resolution at this time.

IV. The Unresolved Conflict Presents An Important Issue For Review In This Case.

Another reason for granting review in this case is the conflict between the decision below and those of other state and federal courts. In this case, the white defendant was represented by a black defense attorney. Although the broad rule created by the Arizona Supreme Court did not make the lawyer a relevant factor, one judge of the Arizona Court of Appeals stated that "the principles of Batson apply to this defendant as if he were black" because the white defendant had a black attorney. State v. Superior Court, 156 Ariz. 512, at 518, 753 P.2d 1168, at 1174 (Ariz.App. 1987),

Appendix C to Petition at C-21 (Shelley, J., dissenting).

In the recent case of Torres v. State of Florida, ____So.2d____, 1989 Fla.App. LEXIS 462 (Fla.App. 2d Dist., Feb. 1, 1989) (copy in Appendix hereto at A-1 to A-12), a white defendant with a black defense lawyer sought the remedy of Batson and the Florida Court of Appeal held that the white defendant, even with a black lawyer, had no standing to challenge the state's peremptories. The Court of Appeal certified the Batson issue to the Florida Supreme Court. (See: Torres, at A-8, infra.)

Both the Florida Court of Appeal in Torres and the Arizona Supreme Court in this case acknowledged the weight of authority among the other states and federal courts to deny standing under the Equal Protection Clause and to deny Batson-type relief under the Sixth

Amendment. See for example: United States v. Vaccaro, 816 F.2d 443, 457 (9th Cir. 1987), cert. denied, ____U.S.____, 108 S.Ct. 295, 98 L.Ed.2d 255 (1987) (white defendants cannot challenge black juror strikes); United States v. Chavez-Vernaza, 844 F.2d 1368, 1376 (9th Cir. 1987) (Hispanic defendants cannot challenge black juror strikes); United States v. Townsley, 856 F.2d 1189, 1191 (8th Cir. 1988) (neither Equal Protection Clause nor Sixth Amendment afford relief to white co-defendant to join black co-defendant in challenging black juror strikes); United States v. Hamilton, 850 F.2d 1038, 1042-43 (4th Cir. 1988) (Equal Protection Clause does not extend Batson remedy to challenges on basis of gender, and Sixth Amendment does not require "fair cross-section" of community on petit juries); Pope v. State, 256 Ga. 196, 345 S.E.2d 831, 839 (Ga. 1986)

(white defendant cannot challenge black juror strikes); State v. Christensen, 720 S.W.2d 738, 739 (Mo.App. 1986) (white defendant cannot challenge black juror strikes); Kibler v. State, 501 So.2d 76, 77 (Fla.App. 5th Dist. 1987) (white defendant cannot challenge black juror strikes); State v. Hall, 751 P.2d 701, 705-06 (N.M.App. 1987) (black defendant cannot challenge strikes against Hispanic jurors); People v. Crowder, 161 Ill.App.3d 1009, 515 N.E.2d 783, 786 (Ill.App. 1st Dist. 1987) (male defendant cannot challenge strikes against female jurors); Smith v. State, 515 So.2d 149, 150 (Ala.Crim.App. 1987) (white defendant, even with black defense attorney, cannot challenge black juror strikes); People v. Holland, 121 Ill.2d 136, 520 N.E.2d 270, 279-80 (Ill. 1988), cert. granted, sub nom, Holland v. Illinois, ____U.S.____, No. 88-5050

(Feb. 27, 1989) (white defendant has no standing to challenge black juror strikes and no "fair cross-section" required for trial jury by Sixth Amendment).

See also: State v. Jackson, 317 N.C. 1, 343 S.E.2d 814, 826 (N.C. 1986) (Batson rule not retroactive since exclusion of blacks from petit jury does "not bear substantially on the truth finding process" and Sixth Amendment cross-section requirement only applies to pool from which petit jurors are drawn but not to petit jury itself); Pope v. United States, 372 F.2d 710, 725 (8th Cir. 1967) (Blackmun, J.), vacated on other grounds, 392 U.S. 651 (1968) (fair cross-section rule only applies to venire pool, not petit jury members chosen).

But see: United States v. Biaggi, 853 F.2d 89, 95-96 (2d Cir. 1988), cert. denied, ___U.S.___, 57 L.W. 3567 (Feb. 27, 1989) (Court of Appeals upheld

ruling of trial court that sufficient justification given by prosecutor in striking Italian-Americans from jury. District Court, at 673 F.Supp. 96 (E.D.N.Y. 1987), found Batson applies to discrimination against any "cognizable group", racial or ethnic, but that final jury was a fair cross-section of district.); Gov't of Virgin Islands v. Forte, 865 F.2d 59, 64 (3rd Cir. 1989) (Batson rule extends to both white and black defendants, so white male defendant can challenge strikes against white males in trial for rape of black female); Seubert v. State, 749 S.W.2d 585, 588 (Tex.App. 1st Dist. 1988) (same race defendant needed under Equal Protection Clause under Batson, but white defendant can be denied Due Process and Sixth Amendment rights for denial of representative cross-section on trial jury).

CONCLUSION

As seen from the growing number of cases, the issue of whether any defendant may require a prosecutor to justify peremptory strikes, regardless of the race of the defendant or the jurors, is important to the administration of criminal (and civil) trial process. In this case, the issue is squarely presented by a white defendant who was granted a broad new remedy by the Arizona Supreme Court which extends Batson-type relief to all classes of defendants and jurors. The extension of this Court's rule in Batson, pursuant to the Sixth Amendment, presents a conflicting and important question that should be resolved in this case. The issue was not resolved in Teague v. Lane, supra, and is not completely presented in Holland v. Illinois, supra. Therefore, this Court should grant the instant Petition and

rule herein. Based upon the weight of authority discussed above and the precedent of this Court's prior decisions on this area of the jury selection process, the decision of the Arizona Court of Appeals and the supplementing opinion of the Arizona Supreme Court should be reversed.

For these reasons, Petitioner submits this Supplemental Brief and requests this Court to grant the writ of certiorari.

Respectfully submitted,

ROBERT K. CORBIN
Attorney General
State of Arizona

STEVEN J. TWIST
Chief Assistant
Attorney General

JESSICA GIFFORD FUNKHOUSER
Chief Counsel
Criminal Division

TIMOTHY C. HOLTZEN
Assistant Attorney General
Counsel of Record

Attorneys for Petitioner

9194d jd

APPENDIX A

ANTONIO TORRES, Appellant, v.
STATE OF FLORIDA, Appellee

Case No. 87-708

Court of Appeal of Florida,
Second District

1989 Fla. App. LEXIS 462

February 1, 1989, Filed

Appeal from the Circuit Court for Hillsborough County; Donald C. Evans, Judge.

THREADGILL, Judge, CAMPBELL, C.J., and PARKER, J., Concur.

James Marion Moorman, Public Defender, and Robert Mack, Assistant Public Defender, Bartow, for Appellant.

THREADGILL

THREADGILL, Judge.

Appellant, a white defendart who was represented by black counsel at trial, challenges his convictions for

first-degree murder and armed robbery. He contends that the state systematically excluded black jurors, improperly commented on his right to remain silent, and that the court failed to give his requested jury instructions on lesser included offenses. We find no reversible error and affirm.

During voir dire examination of the jury panel before trial, the state exercised five peremptory challenges to exclude five black prospective jurors. Appellant's attorney made timely objections on the basis that the challenges constituted a systematic exclusion of blacks from the jury. Appellant's attorney asked the court to require the prosecutor to provide non-racial reasons for its challenges. The court denied the request, declaring that appellant did not have standing to object because he was white. We agree.

In Peters v. Kiff, 407 U.S. 493, 92 S.Ct. 2163, 33 L.Ed.2d 83 (1972), a white defendant challenged the prosecutor's systematic exclusion of black jurors from the grand and petit jury. The United States Supreme Court, although divided on the opinion, held that whatever his race a defendant has standing to challenge the jury selection system on the ground that it arbitrarily excluded members of any race from jury service without a showing of actual harm or bias. Under Peters, appellant would have standing to challenge the state's exclusion of potential black jurors.

However, in Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the Supreme Court subsequently reviewed a black defendant's claims that the prosecutor used his peremptory challenges to strike all four black persons on the venire. The Supreme Court

reversed the conviction because the trial court flatly rejected the defendant's objection to the prosecutor's removal of all black persons on the venire without requiring the prosecutor to explain his reasons. The Court stated that to establish a prima facie case of purposeful discrimination concerning the prosecutor's use of peremptory challenges, the defendant must first show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's own race. 476 U.S. at 96. Obviously, appellant cannot make this prima facie showing as he is white, and the excluded jurors are black.

Some state courts have held that a white defendant has standing to challenge a prosecutor's use of peremptory challenges to eliminate black jurors.

See, e.g., State v. Superior Court, 157 Ariz. 541, 760 P.2d 541 (1988). However, in Kibler v. State, 501 So.2d 76 (Fla. 5th DCA 1987), the fifth district stated that in order to challenge the exclusion of jurors on racial grounds, a defendant must show he is a member of the racial group being singled out for differential treatment. The court held that in accordance with that rule, first enunciated in Batson, Kibler had no standing to challenge the exclusion of the black jurors. Kibler and his alleged victim were both white, as are the appellant and the victims in this case.

Appellant argues that the Florida Supreme Court decision in State v. Neil, 457 So.2d 481 (Fla. 1984), requires reversal. We disagree. In Neil, standing was not an issue because both the defendant and the challenged jurors were black. Neil held that once an

objecting party demonstrates that those challenged are members of a distinct racial group and that there is a strong likelihood they have been challenged solely on race, the burden shifts to the other party to show otherwise. Neil was decided some seven months before Batson. We agree with the statement in Kibler that nothing in the Neil decision indicates that the Florida Supreme Court intended a different test for standing than that set out in Batson. 501 So.2d at 77.

The identical issue was before the Court of Criminal Appeals of Alabama in Smith v. State, 515 So.2d 149 (Ala. Crim. App. 1987). In Smith, the white defendant contended that the rule in Batson should apply to him because he was represented by a black attorney. The court disagreed and stated:

The very wording of Batson establishes that the excluded veniremen and the defendant must be of the same race. Such a holding leaves no room for any argument that the excluded veniremen and the defendant's attorney need only be of the same race in order for Batson to apply. We, therefore, hold that the rule of Batson does not apply in cases where black veniremen are removed from the jury of a white defendant. In so holding, we find ourselves in agreement with other jurisdictions on this issue. See Kibler v. State, 501 So.2d 76 (Fla. 1987); Pope v. State, 256 Ga. 196, 345 S.E.2d 831 (1986); State v. Christensen, 720 S.W.2d 738 (Mo. Ct. App. 1986).

515 So.2d at 150.

Because Florida has not extended standing to a white defendant to challenge the exclusion of black jurors, and because the United States Supreme Court in Batson has receded from its position in Peters, we conclude, on the authority of Batson, that appellant did not have standing to challenge the state's exclusion of black jurors. Therefore, the trial court did not err in failing to require the state to provide

reasons for its use of peremptory challenges. However, we find this issue to be of great public importance and certify the following question to the Florida Supreme Court:

DOES A WHITE DEFENDANT BEING REPRESENTED BY A BLACK ATTORNEY HAVE STANDING TO CHALLENGE THE STATE'S EXCLUSION OF BLACK JURORS BY USE OF PEREMPTORY CHALLENGES IN LIGHT OF BATSON V. KENTUCKY, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) and STATE V. NEIL, 457 So.2d 481 (Fla. 1984)?

Appellant also contends that the trial court erred in denying counsel's motion for mistrial after the state allegedly commented on his right to remain silent. The remarks which the state made were to the effect that the defendant had had his day in court, that the system bends over backwards for defendants, that he had an attorney, and that he put the victim's

family on trial. The prosecutor then commented to the jury that it had not heard any testimony to contradict the state's witnesses. The trial court made a factual finding that the prosecutor's comments referred to defense counsel and not the appellant. It is not improper for a prosecutor in closing argument to review the evidence as a whole and point out that it is uncontradicted. A comment on the credibility of the defense in general as opposed to an individual defendant is permitted. State v. Shepard, 479 So.2d 106 (Fla. 1985); White v. State, 377 So.2d 1149 (Fla. 1979). See e.g. Jones v. State, 253 So.2d 154 (Fla. 2d DCA 1971), cert. denied, 256 So.2d 514 (Fla. 1972), (holding that a similar comment pointed to the fact that the state witness had not been contradicted rather than to the fact that the defendant had not testified). Thus,

the trial court correctly denied appellant's motion for mistrial.

Finally, appellant contends the court erred in denying his requested jury instructions on grand theft and third-degree murder. Florida Rule of Criminal Procedure 3.510 provides that a defendant may be convicted of any offense which is a necessarily included or lesser included offense of the offense charged in the indictment or information and is supported by the evidence.

The offense of grand theft is included in the second count of the indictment which charges robbery of more than $100 with a firearm. The victim testified that the appellant took more than $100 from her. Because the evidence supports the grand theft charge and the charge was included in the indictment, the trial court erred in failing to give this instruction as well as the instruction

regarding third-degree felony murder. However, because the offense of grand theft is two steps removed from robbery with a firearm, the trial court's failure to give this instruction constitutes harmless error. Perry v. State, 522 So.2d 817, 820 (Fla. 1988); State v. Abreau, 363 So.2d 1063 (Fla. 1978); Tobey v. State, 13 F.L.W. 2541 (Fla. 2d DCA Nov. 18, 1988).[1] Likewise, absent the

---

1. Ascensio v. State, 497 So.2d 640 (Fla. 1986), wherein the Florida Supreme Court reversed this court's finding of harmless error with respect to the trial court's failure to give a requested battery instruction. There, the defendant was convicted of aggravated battery with a firearm, a second-degree felony. While an instruction on attempted manslaughter was given, this offense was not listed on the verdict form. Because the offense one step removed from the crime charged was not included on the verdict form, the defendant was entitled to instruction on the lesser included offense of battery. The court, however, upheld the rule articulated in Abreau that a refusal to instruct on a lesser included offense two steps removed from the conviction is harmless error.

grand theft instruction, there is no basis for the third-degree felony murder instruction.

Accordingly, the judgment and sentence is affirmed.

CERTIFICATE OF SERVICE

Three copies of the foregoing Supplemental Brief of Petitioner were served upon Judge Daniel E. Nastro, Respondent, upon counsel for Defendant Elden Gardner, Real Party in Interest, and upon the Solicitor General, by placing them in the United States Mail, first-class postage prepaid, on this 29th day of March of 1989, addressed as follows:

HON. DANIEL E. NASTRO
Judge, Superior Court
Maricopa County Courthouse
101 West Jefferson, Room 612
Phoenix, Arizona 85003
(602) 261-5975
Respondent

DEAN W. TREBESCH, ESQ.
Maricopa County Public Defender
CAROL A. CARRIGAN, ESQ:
Deputy Public Defender
132 South Central Avenue, Sixth Floor
Phoenix, Arizona 85004
(602) 495-8217
Attorney for Defendant,
Real Party in Interest

WILLIAM C. BRYSON, ESQ.
Acting Solicitor General
of the United States
Department of Justice
10th and Constitution
Washington, D.C. 20530
(202) 633-2201

All parties required to be served have been served.

Timothy C. Holtzen

TIMOTHY C. HOLTZEN
Attorney for Petitioner